

China Enacts Export Control Law

中国颁布《出口管制法》

October 19, 2020

2020年10月19日

Trade Controls 贸易管制

On October 17, 2020, China enacted an Export Control Law (“the Law”) that builds upon China’s existing export control regulations, which are scattered across multiple laws, administrative regulations, and rules and measures issued by various departments, with the goal of creating a unified export control system to promote China’s national security and interests and commitment to nonproliferation. While the Law sets out a framework for export controls in China, the Law leaves unanswered a number of key questions of how the system will work in practice, including how its provisions will apply outside of China.

2020年10月17日，中国颁布了《出口管制法》（“这部法律”，或“该法律”）。中国现有的出口管制规则分散于诸多法律、法规和多个部门发布的管理办法中。这部法律在此基础上建立了一个统一的出口管制体系，以促进中国政府维护国家安全和利益和履行防扩散的国际义务。尽管这部法律制定了中国出口管制的法律框架，但对于这一体系将如何在实践中运作，该法在有些关键问题上并未给出明确指引，比如其条款将如何在中国境外适用。

The Law takes effect December 1, 2020. Our translation of the Law can be found [here](#).

这部法律将于2020年12月1日生效。点击查阅我们对该法律的[英文翻译](#)。

Significance and Background

出口管制法颁布的意义和背景

The Law brings China’s system somewhat closer to other export control regimes and has the potential to affect both domestic and international players that are exporting certain items, services, and technologies out of China.¹

这部法律使中国的出口管制制度与其他司法辖区的出口管制制度趋同，并将对自中国向外出口某些产品、技术¹和服务的国内外企业产生影响。

¹ The technologies regulated under the Law focus on technologies related to military, nuclear, and dual-use items. The recently amended *Catalogue of Technologies Prohibited or Restricted from Export* regulates a different group of technologies for a variety of reasons including but not limited to national security. To the extent a technology listed in the catalogue is classified as dual-use, it is subject to the Law.

The Law represents a continuation of the Chinese government's efforts to strengthen national security during President Xi Jinping's administration, focusing specifically on the export of dual-use, military, and nuclear goods, technologies and services, and other items that are related to the maintenance of national security and national interests and performance of non-proliferation and other international obligations ("Controlled Items"). The Law should read in connection with the recently enacted [Encryption Law](#) and the [draft Data Security Law](#), as well as the earlier Cybersecurity Law, National Security Law, and Counterterrorism Law.

这部法律代表着中国政府在习近平主席执政期间加强国家安全努力的延续，并重点关注对两用物项、军品、核以及其他与维护国家安全和利益以及履行防扩散等国际义务相关的货物、技术、服务等物项(统称“管制物项”)的出口管制。这部法律应当参照最近颁布的《[密码法](#)》和《[数据安全法](#)》草案，以及较早颁布的《[网络安全法](#)》、《[国家安全法](#)》和《[反恐怖主义法](#)》。

The Law was first drafted in [June 2017](#) and revised in [December 2019](#) and [June 2020](#). The final version of the law contains only minor differences from the most recent draft. Notably, the Law retains the key features of the earlier drafts, including that the Export Control Law applies extraterritorially.

这部法律的草案公布于 [2017年6月](#)，并于 [2019年12月](#)和 [2020年6月](#)进行了修订。该法律的最终版本在内容上与最近一次修订的草案之间只有微小的差异。值得注意的是，这部法律保留了各版本草案的主要特点，包括将《[出口管制法](#)》的适用范围扩展到中国境外。

Key Provisions of the Law

出口管制法的主要条款

Definition of “dual-use” and “military items”

“两用物项”和“军品”的定义

The Law provides basic definitions of key terms (Article 2):

这部法律对主要术语的基本定义如下（第二条）：

- “Dual-use” is defined as “goods, technologies and services that can be used for not only civil purposes but also military purposes, or that are helpful to enhance military potential, especially those can be used for the design, development, manufacturing or use of weapons of mass destruction and their delivery vehicles”
“两用物项”是指“指既有民事用途，又有军事用途或者有助于提升军事潜力，特别是可以用于设计、开发、生产或者使用大规模杀伤性武器及其运载工具的货物、技术和服务。”
- “Military items” are defined as “equipment, special production equipment and other materials, technologies, and related services used for military purposes.”
“军品”是指“用于军事目的的装备、专用生产设备以及其他材料、技术和有关服务。”
- “Nuclear” is defined as “nuclear materials, nuclear equipment, non-nuclear materials used in reactors, and related technologies and services.”
“核”是指“核材料、核设备、反应堆用非核材料以及相关技术和服务。”
- “Export control” means the prohibitive or restrictive measures taken by the State against the transfer of any Controlled Items out of the People's Republic of China, and the provision of any Controlled Items by any citizens, legal persons or non-corporate organizations of the People's Republic of China to any foreign organizations and individuals

“出口管制”是指国家对从中华人民共和国境内向境外转移管制物项，以及中华人民共和国公民、法人或非法人组织向外国组织和个人提供管制物项，采取禁止或者限制性措施。

- The Law states that technical information and data are included within the definition of Controlled Items. This parallels the reference in the [draft Data Security Law](#), which refers to export control requirements on “data.”

这部法律规定管制物项的定义包括物项相关的技术资料等数据。此规定与《[数据安全法](#)》草案的提议一致，该草案在“数据”层面对出口管制提出了要求。

- The Law does not specifically define “export,” although the provisions are broad enough to cover both “deemed export” and “re-export”.

这部法律没有明确定义“出口”，但其内容涵盖了“视同出口”和“再出口”。

- The Law does not define the term “exporter” (also translated as “export operator” 出口经营者). (An earlier draft defined the term as “a citizen, legal representative, or other organization that is engaged in exporting controlled items in accordance with the rules of laws and administrative regulations.”)

该部法律并未定义“出口商”（也译为“出口经营者”）。（之前的草案将其定义为“根据法律、行政法规的规定从事管制物项出口的公民、法定代表人或者其他组织。”）

Extraterritoriality and Retaliation (Articles 44, 48)

域外适用和对等措施（第四十四，四十八条）

The Law makes the Export Control Law apply extraterritorially. According to Article 44, organizations and individuals outside of China who, in violation of the export control regulations of the Export Control Law, obstruct the fulfilment of international obligations such as non-proliferation and damage China’s national security and interests, shall be held legally accountable. The Law does not provide further detail, although some commentators have linked the new provision to the extraterritorial reach of the export regimes of other countries, such as the United States.

这部法律引入了出口管制法的域外适用。根据第四十四条，中华人民共和国境外的组织和个人，违反出口管制法有关出口管制的规定，妨碍防扩散等国际义务的履行，危害中华人民共和国国家安全和利益的，依法追究其法律责任。该法律并未提供更多域外适用的细节，但有评论认为此规定与其他司法辖区（例如美国）出口管制制度的域外管辖效力有关系。

The final version of the Law includes a broad provision permitting China to take unspecified “reciprocal measures” if another country “abuses” export controls to endanger China’s national security or national interests.

该法最终版本还规定：对于“滥用”出口管制危害中国国家安全和利益的国家，中国可以根据实际情况对该国对等采取措施（具体措施不明）。

Agencies and Their Responsibilities (Articles 4-5)

相关机构及其职责（第四、五条）

The Law does not clearly specify departments under the State Council and the Central Military Commission that will handle export control regulation. Instead, it refers to the agencies as “State Export Control Administrative Departments” (“agencies”, “国家出口管制管理部门”) and states that different agencies will regulate and license different controlled items under the Law.

It seems the Law does not intend to change the current allocation of responsibilities among the various agencies. The future implementation rules might provide more details.

这部法律没有明确规定国务院和中央军委负责出口管理的具体部门，而是将它们统称为“国家出口管制管理部门”，并规定不同的机构将根据法律对不同的管制项目进行管理和许可。目前看来该法似乎不打算改变各部门现有的责任划分体系。未来的实施细则可能会提供明确规定。

Although the Law does not describe how the agencies will work together, it provides that an export control coordination mechanism and expert consultation mechanism should be established to strengthen the cooperation of different agencies and provide guidance to exporters. It remains to be seen whether implementing regulations provide more details.

虽然这部法律没有说明各机构将如何合作，但它规定要建立出口管制协同机制和专家咨询机制，以加强各机构之间的合作，并且对出口经营者提供指导。实施条例是否会提供更多详细的规定尚需拭目以待。

The agencies are obliged to establish a risk management system for end-users and end-uses, and to “inspect” and “enhance the management of end-users and end-uses.” In addition, the agencies also are authorized to assess the countries and regions to which the Controlled Items will be exported to determine the level of risk and implement corresponding controls.

国家出口管制管理部门有义务建立管制物项最终用户和最终用途风险管理制度，并且“核查”和“加强最终用户和最终用途管理。”此外，国家出口管制管理部门有权对管制物项出口目的国家和地区进行评估，确定风险等级，以采取相应的管制措施。

Control System and Control Lists (Chapter 2)

管制体系和管制清单（第二章）

The Law establishes a unified export control system that includes various elements, primarily including a controlled item list, interim measures, prohibited exports, a license system for exporters, and a list of controlled importers and end users.

这部法律制定了一个统一的出口管制制度，其中包括多种要素，主要包括出口管制清单，临时管制，被禁止的出口，出口经营者许可制度，以及最终用户和进口商的管控名单。

The Law does not contain the control list, although presumably it will build from existing lists scattered across different current laws and regulations. It is unclear whether China will continue to use its current system. For a particular product or technology that is not on the list, the Law allows certain agencies to designate such product or technology as a “temporarily controlled item” for up to two years. In addition, the Law authorizes the agencies, with the approval of the State Council and/or the Central Military Commission, to ban the export of certain items (regardless of the destination or end user), or prohibit the export of certain items to specific destinations or parties.

这部法律没有包含出口管制清单，但可能会将分散在不同现行法律法规中的现有清单进行整合。目前还不清楚中国是否会继续使用现行的体系。对于未列入出口管制清单的特定产品或技术，该法允许某些出口管制管理部门将此产品或技术指定为“临时管制物项”。临时管制的实施期限最长可达两年。此外，经国务院批准，或者经国务院、中央军事委员会批准，国家出口管制管理部门有权禁止相关管制物项的出口，或者禁止相关管制物项向特定目的国家或用户出口。

Licensing (Article 13)

出口许可制度（第十三条）

The Law does not detail the process for granting licenses; presumably the implementing regulations will provide more guidance to supplement the current processes provided in the various department regulations and measures.

这部法律没有详细规定颁发许可证的程序；实施细则可能会在目前各部门法规和管理办法中的流程之外再做进一步的补充规定。

Eight factors are to be considered when the licensing agency makes licensing decisions:

在作出准予或不予许可的决定时，出口管制管理部门将综合考虑下列 8 种因素：

1. **national security and national interests**
国家安全和利益
2. **international obligations**
国际义务
3. **type of export**
出口类型
4. **degree of sensitivity of the item**
管制物项敏感程度
5. **destination country or region**
出口目的国家或地区
6. **end-user and end-use**
最终用户和最终用途
7. **credit record of the exporter**
出口经营者的信用记录
8. **other factors provided by laws and regulations**
法律、行政法规规定的其他因素

Some of the earlier drafts had included a deadline for the licensing agency to make a determination; the final version of the Law does not contain a deadline.

较早的草案给许可管理机构设定了作出决定的最后期限；但该法律的最终版本没有规定最后期限。

Catch-All License Requirement (Article 12)

对于许可的兜底要求（第十二条）

Under the Law, an exporter must still apply for an export license, even if the item is not included on a control list, if the exporter knows or should know that the export of a product, technology, or service likely would:

根据这部法律，即使出口的物品不属于出口管制清单所列的物项，出口经营者也必须申请出口许可证，只要出口经营者知道或者应当知道，该货物、技术和服务的出口可能会：

- “endangering [China’s] national security or national interests” (which is not further defined);
“危害国家安全和利益”（尚未进行明确定义）；
- being used for the design, development, production, or use of weapons of mass destruction and their delivery vehicles; or

被用于设计、开发、生产或者使用大规模杀伤性武器及其运载工具；或

- **be used for terrorism.**

被用于恐怖主义目的。

The agencies should respond “in a timely manner” to inquiries regarding whether an item is subject to control.

国家出口管制管理部门应“及时”答复关于某一物品是否属于管制物项的询问。

End-User and End-Use Certifications (Article 15)

最终用户和最终用途证明（第十五条）

The Law obliges the end user (or the government of the end user) to provide end-user and end-use certifications, and for exporters to proactively supply such documents to the regulators, presumably as part of the license application process. In addition, an export operator or importer is obliged to report any potential change to the end-user or end use.

这部法律要求最终用户（或最终用户的政府）出具最终用户和最终用途证明文件，并要求出口经营者主动向出口管制管理部门提供该等文件。这可能是许可证申请过程的一个环节。此外，对于最终用户或者最终用途的可能改变，出口经营者或进口商有义务主动进行报告。

Restricted List for Certain Importers and End-Users (Article 18)

进口商和最终用户管控名单（第十八条）

The Law calls for a “restricted list” (also translated as “control list”) for importers and end users that:

根据本法，国家对于满足下列情形之一的进口商和最终用户将建立一个管控清单：

- **violate the requirements regarding end users and end uses**
违反最终用户或者最终用途管理要求的；
- **may endanger national security or national interests; or**
可能危害国家安全或利益的；或
- **use Controlled Items for terrorist purposes.**
将管制物项用于恐怖主义目的的。

Importers and end users that are included in the restricted list are subject to additional restrictions or control measures when dealing with the relevant Controlled Items. Exporters are not allowed to transact with listed importers and end users without approval.

列入管控名单的进口商和最终用户对于相关管制物项的交易面临额外的限制和措施。出口经营者未经批准不得与列入管控名单的进口商、最终用户进行交易。

The Law allows listed exporters and end users to apply to be removed from the list if they have remedied the original basis for listing.

列入管控名单的进口商、最终用户经采取措施纠正上述情形的，可以申请被移出管控名单。

Other Requirements on Exporters (Article 14)

对出口经营者的其他要求（第十四条）

Earlier drafts had required exporters to implement an “internal system for export control compliance.” The Law removes the explicit requirement for each exporter to implement such a system, instead giving exporters whose systems “work well” the possibility of a general license for certain controlled items or other unspecified benefits.

该法律较早的草案要求出口经营者实施一个“出口管制内部合规制度”。该法律最终版本移除了每一个出口经营者必须实施该制度的明确要求，取而代之的是对于制度“运行情况良好”的出口经营者，可能提供某些管制物项出口的通用许可或其它便利措施（具体办法暂未规定）。

Hong Kong/Taiwan/Macau

香港/台湾/澳门

An earlier draft provided that the Law would apply to exports to Taiwan, Hong Kong, and Macau. That provision was deleted in later drafts and does not appear in the final version of the Law. We assume that implementing regulations will confirm that the controls will apply to exports from mainland China to Taiwan, Hong Kong, and Macau.

较早的草案规定该法律将适用于向台湾、香港和澳门的出口。这项规定已在后来的草案中被删除，没有出现在该法的最终版本中。我们认为，实施条例将确定管制规则将适用于从中国大陆到台湾、香港和澳门的出口。

Investigative Powers and Penalties for Noncompliance (Chapters 3-4)

调查权和违规处罚（第三、四章）

The enforcement agencies have power to investigate potential violations, including the power to enter business premises, review and copy documents, interview witnesses, inspecting the delivery vehicles used for the export, seize the items involved in the investigation, and review bank account activity.

执法机构有权调查潜在的违法行为，包括有权进入营业场所、审查和复制文件、约见证人、检查运载工具、扣押调查涉及的相关物项和审查银行账户活动。

The Law outlines various penalties for violations, including warnings, orders to stop the violations, confiscation of illegal gains, fines on exporters and “responsible persons,” denial or revocation of licensing, suspension of business, and revocation of qualification to export related items.

这部法律列出了一系列对违法行为的处罚措施，包括警告、责令停止违反行为、没收违法所得、对出口经营者和“负责人”的罚款、拒绝发放或撤销许可证、停业整顿、以及吊销相关管制物项出口资质。

Companies or individuals can be subject to one or more of the above penalties for exporting without a license, obtaining a license through bribery or other fraudulent behavior, exporting prohibited items, circumventing export control measures, conducting transactions with parties on the Restricted List, or obstructing investigations (including not cooperating with a site inspection). Further, some of the penalties also apply to third parties providing freight services, customs declarations, electronic trading platforms, and financial services to exporters that violate the Law.

无许可证出口、以贿赂等欺诈手段取得许可证、出口禁止出口的物项，规避出口管制措施、与管控名单上的实体进行交易、妨碍调查（包括不配合现场检查）的企业或个人可被施以上述一项或多项处罚。此外，一部分上述处罚也适用于向出口经营者提供货运服务、报关单、电子交易平台和金融服务的第三方。

The final version of the Law makes it clear that exporting Controlled Items that are prohibited from being exported or exporting Controlled Items without a license in violation of this Law shall be subject to criminal liability.

该法最终版本明确规定，对于出口国家禁止出口的管制物项或者未经许可出口管制物项的行为，依法追究刑事责任。

Export control agencies may deny applications for export licenses filed by exporters for five years after the penalty decisions. In addition, the information of exporters who violate this Law may be added to their credit records by the export control agencies.

处罚决定作出后五年内，出口管制机构可以拒绝该公司或者个人的出口许可证申请。此外，国家出口管制管理部门可将出口经营者违反本法的情况纳入信用记录。

The Law does not specifically provide for a voluntary disclosure system, or potential mitigation for such disclosures.

该法律没有对自愿披露制度作出专门的规定，也没有为此类披露提供可能的从宽处理。

Other Restrictions (Article 32)

其它限制（第三十二条）

The Law contains a vague provision that prohibits — likely in the context of international communications and cooperation on export controls — an organization or individual within the territory of China to provide “export control-related information” to those outside of the territory of China, if such sharing of information endangers the national security or national interests of China. The Law does not clarify what information and what kind of information sharing is subject to such prohibition.

这部法律还包含一个模糊的规定，禁止中华人民共和国境内的组织和个人在可能危害国家安全和利益的情况下向境外提供“出口管制相关信息”（此规定似乎适用于在出口管制的国际交流和合作过程中）。目前不清楚何类信息以及何种情况下提供此类信息是被禁止的。

Next Steps: Implementing Regulations and Compliance Challenges

后续：实施条例和合规挑战

Companies that have focused their export control compliance efforts on regimes in the United States and Europe will need to determine whether their activities exporting items from China trigger China export control issues under the Law. This may include identifying tracking end users and end uses and reporting changes; establishing internal compliance systems to meet regulatory expectations in China; enhancing “know your customer” diligence to avoid providing services to parties engaging in activities violating the Law; and evaluating whether activities outside of China are subject to the Law due to its extraterritorial application. Companies that import or use Controlled Items from China shall also take caution to avoid being included in the restricted list for importers and end users.

之前把出口管制合规工作的重点放在美国和欧洲制度上的公司，需要确定它们从中国出口物品的活动是否会涉及本部法律规定的中国出口管制问题。这可能包括查明、跟踪最终用户和最终用途以及报告变化；建立内部合规制度以满足中国监管的要求；加强“了解你的客户”的尽职调查，以避免向从事违法活动的人士提供服务；评估在中国境外的活动是否因域外适用而受本部法律的管辖。从中国进口管控物项或者使用来自中国的管控物项的公司也应谨慎行事以避免被列入进口商和最终用户管控名单。

Like most laws in China, we anticipate that the government will in the future issue regulations with more details to implement the Law. Given the timing of the multiple drafts, we anticipate that the government may take some time to align with internal and external stakeholders before issuing these implementing regulations.

同大多数中国法律一样，我们预计中国政府将在未来发布更详细的法规来实施这部法律。鉴于各草案的出台时间，我们预计在发布这些实施条例之前，中国政府可能需要一些时间与内部和外部利益相关者进行协调。

Companies seeking to comply with the Law after its effective date of December 1, 2020 may have difficulty doing so until those implementing regulations are released. As suggested above, the Law lacks a number of key elements necessary for companies to comply:

在该法律生效日期（2020年12月1日）后，寻求合规的公司可能会在实施条例公布之前遇到一些困难。如上所述，这部法律缺乏公司合规所需要的一些关键要素：

- **clarification on deemed exports (e.g., whether the sharing of technical information or data between the Chinese employees of a foreign-invested enterprise and a foreign employee of the same company is subject to export controls)**
对视同出口的进一步明确 (比如外商投资企业中国雇员向外国雇员提供技术信息或数据是否受出口管制的限制)
- **clarification on the definition of “export control-related information” and when the sharing of such information with overseas parties is allowed**
澄清何为以及何种情况下能向境外提供“出口管制相关信息”
- **the mechanism for reporting potential changes of end users or end uses**
最终用户和最终用途可能发生变化的报告机制
- **standards and process for obtaining facilitation measures such as a general license for exporters with a satisfactory internal compliance program**
具有完善的内部合规计划的出口经营者获得通用许可等便利措施的标准和流程
- **more details on interim measures, prohibited exports, and restricted list of importers and end users**
关于临时措施、禁止出口、以及进口商和最终用户管控名单的详细规定
- **more details on the extraterritorial application of the Law and potential retaliatory measures**
关于该法律的域外适用和潜在对等措施的详细规定

* * *

If you have questions concerning the material discussed in this alert, please contact any of the following China-focused Covington attorneys:

如果您对本电子期刊的内容有任何疑问，请联络科文顿的以下中国团队律师：

<u>Eric Carlson</u> (柯礼晟)	+86 21 6036 2503	ecarlson@cov.com
<u>Min He</u> (何敏)	+86 10 5910 0510	mhe@cov.com
<u>Tim Stratford</u> (夏尊恩)	+86 10 5910 0508	tstratford@cov.com
<u>Yan Luo</u> (罗嫣)	+86 10 5910 0516	ylo@cov.com
<u>Helen Hwang</u> (黄玉玲)	+86 21 6036 2520	hhwang@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

本文信息无意作为法律意见。读者在就本文中提及的事项采取行动前应寻求具体的法律意见。

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

科文顿·柏灵律师事务所是一家国际律师事务所，为客户提供公司、诉讼及监管专业知识，以助其实现目标。本通讯旨在向我们的客户及其他有兴趣的同事提供相关的动态。如果您将来不希望收到电邮或电子期刊，请发送电邮至 unsubscribe@cov.com。